

JOHN N. HOSTETTLER
8TH DISTRICT, INDIANA

COMMITTEE ON ARMED SERVICES

SUBCOMMITTEES:
PROJECTION FORCES
READINESS

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEES:
THE CONSTITUTION
CHAIRMAN, IMMIGRATION,
BORDER SECURITY AND CLAIMS



Congress of the United States
House of Representatives

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February 17, 2005

The Honorable George W. Bush
President of the United States
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President,

I write to request your assistance with a situation that has recently taken place in my district regarding the public display of the Ten Commandments on the lawn of the Gibson County Courthouse in Princeton, Indiana. A federal district judge recently ruled in *Russelburg v. Gibson County* that the presence of a monument depicting the Ten Commandments amounts to an endorsement of religion because, as he states, the display is "in violation of the Establishment Clause of the First Amendment to the United States Constitution." While this decision may be consistent with recent federal jurisprudence, *Harvey v. Cobb County*, 511 U.S. 1129 (1994), it is inconsistent with both the clear intent of the Framers and the Christian heritage of the United States, *Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892).

It has come to my attention that the Gibson County Commissioners are considering the removal of the monument prior to the sixty-day deadline handed down by the judge (this deadline is April 1, 2005). For this reason, I am requesting that you instruct the Department of Justice and the United States Marshals Service not to enforce this or any appellate - including Supreme Court - decision or execute any order that may ask for the removal of this monument by the Executive Branch. As you know, the federal judiciary has no constitutional or statutory means by which to enforce its own opinion. This led Alexander Hamilton in *Federalist No. 78* to observe the following with regard to the relative power structure as established by the Constitution:

"The judiciary ... has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and **can take no active resolution whatever**. It may truly be said to have neither FORCE nor WILL but **merely judgment**. This simple view of the matter ... proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power..." [emphasis added]

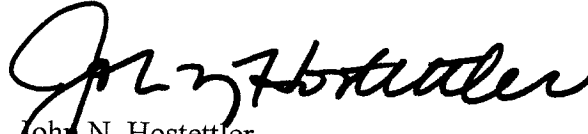
In fact, Mr. President, it would be your employees, namely the U. S. Marshals, that would be called on to execute an order to remove the Ten Commandments as a result of your endorsement of this decision. Once again it was Hamilton that put it succinctly when he stated in

Federalist No. 78, "The judiciary ... must ultimately depend upon the *aid of the executive arm* even for the efficacy of its judgments." [emphasis added]

This notion of the U. S. Marshals Service being under the authority of the Executive alone is born out by numerous federal judicial precedents including *In re Neagle*, 135 U.S. 1 (1890); *Consolidated Gas Co. of New York v. Hardy*, 14 F.Supp 223 (S.D.N.Y. 1936); *Farley v. United States*, 352 U.S. 891 (1956); *Martin v. Tobin*, 451 F.2d 1335 (9th Cir. 1971); and *Chabal v. Reagan*, 841 F.2d 1216 (3d Cir. 1988).

Mr. President, the Framers of the Constitution crafted a document that set forth a government with a separation of powers. This government relies on checks and balances between the various branches. I ask that you exercise your prerogative as Executive not to enforce an order that is not only inconsistent with the values of the vast majority of Americans but also has no basis in either the Constitution or statutes of the United States of America.

Sincerely,

A handwritten signature in black ink, appearing to read "John N. Hostettler". The signature is fluid and cursive, with the first name "John" being particularly prominent.

John N. Hostettler
Member of Congress
Indiana, Eighth District

cc: Attorney General Alberto Gonzales
Gibson County Commissioner Linda Hoover
Gibson County Commissioner Sherrell Marginet
Gibson County Commissioner Don Whitehead